

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY TUCKER,

Plaintiff,

v.

Civil Case No. 09-13017
HON. PATRICK J. DUGGAN

JOE LNU and MILAN CORRECTIONAL
FACILITY,

Defendants.

ORDER OF DISMISSAL AND JUDGMENT

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan on August 3, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Larry Tucker has filed a *pro se* civil rights complaint against Defendants seeking monetary damages in the amount of \$2 million. Plaintiff has been granted leave to proceed *in forma pauperis* in this action.

In his complaint, Plaintiff alleges that Defendants have placed some type of device (which he refers to as “Cambra” or “Cambras”) on his private parts and that through this device they can watch what he is doing and listen to what he is thinking twenty-four hours a day. Apparently a prison official named “Joe” and his wife are involved, although Plaintiff also alleges that the whole staff is stalking him. It appears from Plaintiff’s complaint, however, that he no longer is incarcerated.

28 U.S.C. § 1915 requires a court to dismiss a case in which the plaintiff proceeds in forma pauperis “at any time if the court determines that . . . (B) the action or appeal– (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous if it lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325, 109 S. Ct. 1827, 1831-32 (1989). The term “frivolous” “embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.* at 325, 109 S.Ct. at 1832. Examples of meritless legal theories are claims in which it is clear that the defendants are immune from suit and claims of infringement of a legal interest which clearly does not exist. *Id.* at 327, 109 S. C. at 1833. Examples of baseless factual contentions are claims describing fantastic or delusional scenarios. *Id.* at 328, 109 S. Ct. at 1833.

Plaintiff’s complaint is frivolous because it is fantastic and delusional. Moreover, Plaintiff’s complaint against the Milan facility is actually a claim against the Michigan Department of Corrections (“MDOC”). The Eleventh Amendment bars claims for money damages (as well as injunctive relief) against state agencies. *Sims v. Mich. Dep’t of Corr.*, 23 Fed. App’x 214, 215 (6th Cir. 2001). The Court therefore concludes that Plaintiff’s complaint is subject to dismissal pursuant to § 1915.

Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” The United States Supreme Court has interpreted “good faith” to mean “not frivolous.” *Coppedge v.*

United States, 369 U.S. 438, 446, 82 S. Ct. 917, 921 (1962). As the Court has concluded that Plaintiff's complaint is frivolous, it certifies that any appeal of this Opinion and Order would not be taken in good faith.

Accordingly,

IT IS ORDERED, that Plaintiff's complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(e)(2)(b).

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
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